



This document is scheduled to be published in the Federal Register on 01/19/2012 and available online at <http://federalregister.gov/a/2012-00969>, and on [FDsys.gov](http://FDsys.gov)

(Billing Code 5001-06-P)

**DEPARTMENT OF DEFENSE**

**Defense Acquisition Regulations System**

**48 CFR Part 204**

**RIN 0750-AH56**

**Defense Federal Acquisition Regulation Supplement: Order of Application for Modifications (DFARS Case 2012-D002).**

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Proposed rule.

**SUMMARY:** DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement to establish an order for application of contract modifications to resolve any potential conflicts that may arise from multiple modifications with the same effective date.

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before **[Insert date 60 days after date of publication in the FEDERAL REGISTER]**, to be considered in the formation of the final rule.

**ADDRESSES:** Submit comments identified by DFARS case 2012-D002, using any of the following methods:

o Regulations.gov: <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by inputting "DFARS Case 2012-D002" under the heading "Enter keyword or ID" and

selecting "Search." Select the link "Submit a Comment" that corresponds with "DFARS Case 2012-D002." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "DFARS Case 2012-D002" on your attached document.

- o E-mail: [dfars@osd.mil](mailto:dfars@osd.mil). Include DFARS Case 2012-D002 in the subject line of the message.
- o Fax: 703-602-0350.
- o Mail: Defense Acquisition Regulations System, Attn: Mr. Julian Thrash, OUSD(AT&L)DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301-3060.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check [www.regulations.gov](http://www.regulations.gov), approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

**FOR FURTHER INFORMATION CONTACT:** Mr. Julian Thrash, 703-602-0310.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The Defense Federal Acquisition Regulation Supplement (DFARS) subpart 204.70, Uniform Procurement Instrument Identification Numbers, prescribes numbering procedures for contract modifications and the Federal Acquisition

Regulation (FAR) part 43.1, General, prescribes rules for determining the effective date. There are no rules to describe in what order to apply modifications to determine the actual content of a resulting modified contract. In order to determine the sequence of modifications to a contract or order, a method for determining the order of application for modifications is needed to resolve any conflict arising from multiple modifications with the same effective date. As such, this rule proposes to add DFARS text at 204.7007, Order of Application for Modifications, to resolve any potential inconsistency.

## **II. Executive Orders 12866 and 13563**

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

### **III. Regulatory Flexibility Act**

DoD does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because this rule only affects the internal operating processes of DoD by clarifying an order of application for contract modifications, and it does not have an economic impact on contractors. However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

The objective for this case is to provide a set of rules to the contracting officer to resolve any potential conflict from multiple modifications with the same effective date. The changes required to the DFARS by this case only affect the internal operating processes of DoD by establishing an order of application for contract modifications. These changes are not expected to have a significant economic impact on contractors.

This rule does not impose any new reporting or recordkeeping requirements.

The rule does not duplicate, overlap, or conflict with any other Federal rules. The alternative to this rule is to continue relying on DFARS subpart 204.70, which prescribes numbering procedures for contract modifications, and FAR subpart 43.1, which provides guidelines for determining the effective date. However, the cited text does not provide a clear structured path

to ensure no ambiguity arises when determining what order to apply modifications.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2012-D002) in the correspondence.

#### **IV. Paperwork Reduction Act**

This rule does not impose any new information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

#### **List of subjects in 48 CFR Part 204.**

Government procurement.

**Mary Overstreet,**

*Editor, Defense Acquisition Regulations System.*

Therefore, 48 CFR part 204 is proposed to be amended as follows:

1. The authority citation for 48 CFR part 204 is revised to read as follows:

**Authority:** 41 U.S.C. 1303 and 48 CFR chapter 1.

## **PART 204 - ADMINISTRATIVE MATTERS**

2. Add section 204.7007 to read as follows:

### **204.7007 Order of application for modifications.**

(a) Circumstances may exist in which the numeric order of the modifications to a contract is not the order in which the changes to the contract actually take effect.

(b) In order to determine the sequence of modifications to a contract or order, the modifications will be applied in the following order:

(1) Modifications will be applied in order of the effective date on the modification.

(2) In the event of two or more modifications with the same effective date, modifications will be applied in signature date order.

(3) In the event of two or more modifications with the same effective date and the same signature date, procuring contracting office modifications will be applied in numeric order, followed by contract administration office modifications in numeric order.

[FR Doc. 2012-969 Filed 01/18/2012 at 8:45 am; Publication Date: 01/19/2012]